

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – ADMINISTRATIVE HEARINGS OFFICE
JANUARY 5, 2021**

ITEM 2

SUBJECT

CONSIDERATION OF A PROPOSED ORDER IMPOSING ADMINISTRATIVE CIVIL LIABILITY ON JAMES V. SIMONI FOR FAILURE TO TIMELY FILE SUPPLEMENTAL STATEMENT OF WATER DIVERSION AND USE FOR 2018 DIVERSIONS AND USE UNDER S000486

DISCUSSION

On October 18, 2019, an Assistant Deputy Director of the Board's Division of Water Rights (Division) issued an Administrative Civil Liability Complaint (ACL Complaint) to James V. Simoni (Respondent), holder of water rights claims in Statement S000486, based on Respondent's failure to timely file its annual supplemental statement of water diversion and use for its 2018 diversions and use. The ACL Complaint stated that the total maximum potential liability for Respondent's failure to file its supplemental statements of water diversion and use for 2018 was \$54,000, based on an alleged violation for 108 days and the maximum penalty of \$500 per day per statement under Water Code section 1846. The ACL Complaint recommended the imposition of \$2,000 in administrative civil liability.

The ACL Complaint contained an "EXPEDITED SETTLEMENT OFFER" that, if accepted by Respondent, would have reduced the administrative civil liability to \$500 in return for Respondent's waiver of its right to a hearing and Respondent's filing of the supplemental statements for 2018 within 30 days.

Respondent did not accept the Division's settlement offer and requested a hearing. Respondent filed its supplemental statements for 2018 on June 9, 2020.

The Administrative Hearings Office (AHO) held a hearing on the ACL Complaint on July 24, 2020. On October 21, 2020, the AHO transmitted its proposed order to the Clerk of the Board.

The AHO's proposed order discusses the relevant facts and the statutory factors the Board is to consider when deciding the appropriate amount of administrative civil liability. Considering these factors, the proposed order concludes that \$6,000 is the appropriate administrative civil liability amount. The proposed order concludes that this amount, which is substantially higher than the recommended amount in the ACL Complaint, is appropriate for several reasons. First, Respondent did not file his supplemental statement until almost one year after the filing deadline. Such substantial delays seriously undermine the Division of Water Rights' and the Board's ability to

timely and effectively administer California's water rights system. Second, the statement for 2018 that Respondent finally filed clearly contains very substantial overstatements of the amounts that Respondent diverted in 2018. These significant inaccuracies significantly diminish the value of the data in Respondent's supplemental statement. Third, Respondent has made no effort to measure, or even to accurately estimate, the amounts of his monthly diversions despite the applicable statutory and regulatory requirements. Fourth, Respondent's filing for 2018 continued his persistent pattern of late, obviously inaccurate filings that began with the supplemental statement he filed for 2009. Fifth, Respondent still has not demonstrated any willingness to attempt to correct most of these deficiencies. This unwillingness is demonstrated by his supplemental statement for 2019, which, although filed before the deadline, contains the same obviously inaccurate monthly diversion amounts. This unwillingness also is demonstrated by the many meritless arguments Respondent made before and during the hearing.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

The activity is budgeted within existing resources and no additional fiscal demands will result from approval of the proposed order.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

The AHO recommends that the State Water Board adopt the proposed order.